

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: FCA US LLC MONOSTABLE
ELECTRONIC GEARSHIFT LITIGATION

MDL No. 2744

Case Number 16-md-02744
Honorable David M. Lawson
Magistrate Judge David R. Grand

PRETRIAL ORDER NO. 1: INITIAL SCHEDULING BENCHMARKS

Several civil actions have been filed in various districts involving alleged defects in vehicles manufactured by FCA US LLC (commonly referred to as Fiat Chrysler Automotive, or FCA) that are equipped with “monostable electronic gearshifts.” On October 5, 2016, the Judicial Panel on Multidistrict Litigation (JPML) ordered these actions under 28 U.S.C. § 1407 to be centralized in the Eastern District of Michigan and assigned the actions to the undersigned. After notice to all counsel of record, the Court conducted an initial scheduling conference on November 10, 2016 on the record in open court and established certain protocols and preliminary scheduling deadlines.

Accordingly, it is **ORDERED** as follows:

I. Applicability of Order. The provisions of this Order shall govern the practice and procedure in those actions that were transferred to this Court by the JPML. This Order applies to all related cases filed in all divisions of the Eastern District of Michigan and all “tag-along actions” later filed in, removed to, or transferred to this Court.

II. Consolidation. The civil actions transferred to this Court or related to the actions already pending before this Court are consolidated for pretrial purposes. Any “tag-along actions” transferred to this Court, or directly filed in the Eastern District of Michigan, will be consolidated automatically with this action without the necessity of future motions or orders. This consolidation does not constitute a determination that the actions should be consolidated for trial, nor does it have

the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

III. Master Docket File. The Clerk of Court will maintain a master docket case file under the style “In re: FCA US LLC Monostable Electronic Gearshift Litigation” and the identification “MDL No. 2744.” When a pleading or other paper is intended to apply to all actions, this shall be indicated by the words: “This Document Relates to: ALL ACTIONS.” When a pleading is intended to apply to fewer than all cases, this Court’s docket number for each individual case to which the document number relates shall appear immediately after the words “This Document Relates to.”

IV. Appearances, Admissions, and Filing. The Court’s previous order notwithstanding, each attorney of record is obligated to become an Eastern District of Michigan ECF Registered User, complete the ECF training, and be assigned a user ID and password for access to the Case Management/Electronic Case Filing (CM/ECF) system. If she or he has not already done so, counsel shall register forthwith to become an ECF User, complete the ECF training, and be issued an ECF User ID and password. To do so, attorneys must be admitted to practice in this district for MDL purposes. Attorneys may contact the Clerk at attyhelp@mied.uscourts.gov to request assistance. All lead and liaison counsel and members of the Plaintiffs’ Steering Committee counsel must be admitted to practice in this district for all purposes. An attorney wishing to appear before the Court also must be admitted for all purposes. Attorney admission is governed by E.D. Mich LR (Local Rule) 83.20. Association of local co-counsel for the plaintiffs is not required. All attorneys of record will be required to file documents via the Court’s CM/ECF system. All documents shall be e-filed in the Master file, 16-md-2744. Documents that pertain to one or only some of the

pending actions shall also be e-filed in the individual case(s) to which the document pertains. Registration instructions for *pro se* parties who wish to e-file can be found on the Court's website at http://www.mied.uscourts.gov/pdf/files/Pro_se_Efile_application.pdf.

V. Consolidated Master Complaint; Responses. The plaintiffs must file a consolidated master complaint **on or before December 23, 2016**. If the defendant intends to challenge jurisdiction, either subject matter or personal, then it must file an appropriate motion **on or before January 16, 2017**. The defendant must file additional responses to the complaint in the form of an answer or a motion under Federal Rule of Civil Procedure 12(b) **on or before February 15, 2017**.

VI. Case Management Plan. **On or before December 1, 2016**, counsel for the parties must meet to discuss a proposed case management plan to be submitted under Federal Rule of Civil Procedure 26(f). The points of discussion should include:

- Necessity of amendments to pleadings, additional parties, third-party complaints, etc.;
- Anticipated discovery disputes, and the basis for any objections;
- Insurance available to satisfy part or all of a judgment, including indemnification agreements; and
- An appropriate management plan, including a schedule setting discovery completion and class certification motion filing dates; discovery phasing; and expert identification and disclosures.

If the parties are able to agree on a proposed plan, it should be docketed **on or before December 6, 2016**. If the parties cannot agree, then each side should submit its proposal to chambers by that date.

VII. Settlement Master. All parties are invited to file any suggestions of person(s) to be appointed as Special Settlement Master. The submissions must be filed **on or before December**

2, 2016, and each submission shall not exceed three pages. Any responses, objections, or support for persons suggested by other parties shall be filed **on or before December 9, 2016**.

VIII. Motion Practice. The Court strictly enforces the requirements of Eastern District of Michigan Local Rules 5.1 and 7.1 and the Electronic Filing Policies and Procedures for all motions. Failure to follow these rules likely will result in a denial of the motion and may lead to sanctions. Pay particular attention to these features:

- A. The Court requires strict compliance with LR 7.1(a), which requires moving parties to seek concurrence before filing a motion. The Court requires that a good-faith effort be made to obtain concurrence, which normally involves actual contact with opposing counsel. If no actual conversation occurs, the moving party must show that reasonable efforts were undertaken to conduct a conference. All of this must be documented specifically in the motion papers.
- B. Do NOT docket any proposed orders in the ECF system, either separately or as an exhibit to any other filing. If a proposed order is to be submitted, it should be sent via the “document utilities” feature of the ECF system.
- C. All briefs must comply with Eastern District of Michigan Local Rules 5.1 and 7.1, must contain citations to appropriate authorities within the text of the brief (not in footnotes), and citations must conform to the latest edition of The Bluebook: A Uniform System of Citation published by the Harvard Law Review. Unpublished material must include a reference to a Westlaw citation. Briefs must contain a concise statement of facts; facts stated in the statement of facts *must* be supported with citations of either the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits. Footnotes are

discouraged, but if they are utilized they must be printed in the same font size as the text, which may not be less than 14-point, proportional text (or 10½ characters per inch non-proportional).

D. Answers to motions and supporting briefs must be filed according to the schedule set forth in LR 7.1(d). Note that Rule R5(e) of the Electronic Filing Policies and Procedures prohibits combining an answer to a motion with a counter-motion in the same filing. *The Court does not issue a briefing schedule. The Court enforces the response and reply due dates as set forth in LR 7.1(d) and Fed. R. Civ. P. 6, even when the motion hearing is set far in advance.* Attorneys who do not respond to motions in a timely fashion are not permitted to argue before the Court during oral argument, if oral argument is scheduled.

E. Courtesy copies of motions and briefs must be provided to chambers in accordance with Rule R5(b) of the Electronic Filing Policies and Procedures.

F. If a hearing is scheduled, the Court's Case Manager will send out a notice of the hearing date.

IX. Status Conference Schedule. The Court will schedule status conferences on a monthly basis. The Court may cancel a conference if there appears to be no need for it. Status conferences must be attended in person by lead and liaison counsel for the plaintiffs and by defense counsel. Other counsel for the plaintiffs may attend. The conferences will be conducted in open court and a record will be made. Counsel who want to listen in may arrange to do so by calling the AT&T conference call service. The telephone number for that service will be provided to counsel on the service list before the next scheduled status conference. AT&T conference call participants may only listen to the proceedings. The next four conferences will be held on:

Tuesday, December 13, 2016 at 2:00 p.m.
Wednesday, January 18, 2017 at 3:00 p.m.
Thursday, February 16, 2017 at 2:00 p.m.
Thursday, March 16, 2017 at 3:00 p.m.

X. Preservation of Evidence. All parties and counsel are reminded of their duty to preserve evidence that may be relevant to this action, including electronically stored information. Any evidence preservation order previously entered in any of the transferred actions shall remain in full force and effect until further order of the Court. Until the parties reach an agreement on a preservation plan for all cases or the Court orders otherwise, each party shall take reasonable steps to preserve all evidence that may be relevant to this litigation. Counsel, as officers of the court, are obligated to exercise all reasonable efforts to identify and notify parties and non-parties, including employees of corporate or institutional parties, of their preservation obligations.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: November 15, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 15, 2016.

s/Susan Pinkowski
SUSAN PINKOWSKI